

2011 WL 7005003 (Minn.Dist.Ct.) (Trial Motion, Memorandum and Affidavit)
District Court of Minnesota,
Sixth Judicial District.
St. Louis County

Alan MEINERSHAGEN,
v.
Stefan J. KONASIEWICZ, M.D., and St. Luke's Hospital of Duluth, Defendants.

No. 69DU-CV-10-2255.
August 9, 2011.

Plaintiff's Slip Trial Brief re: Defendants' Experts Disclosures

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Case Type: Medical Negligence

Undisclosed expert testimony of the Defendants is not only inadmissible but is also unconstitutional.

[Minn. R. Civ. P. 26.02](#) (e) providing for expert disclosure states:

A party may through interrogatories require any other party to identify each person whom the other party expects to call as an expert witness at trial, to state the subject matter on which the expert is expected to testify, and to state the substance of the facts and opinions to which the expert is expected to testify and a summary of the grounds for each opinion.

The Advisory Committee, in its comments to the Rules in 1975 stated:

Trial preparation is substantially hampered by an inability to anticipate *fully* the expected testimony of opposing experts. Thus [Rule 26.02\(a\)\(A\)\(i\)](#) requires a party to respond to interrogatories ... (emphasis added.)

The Supreme Court has ruled “A party thus has an absolute right to a summary of the grounds for each opinion held by the opponent's experts.” in [Dennie v. Metropolitan Medical Center](#), 387 N.W.2d 401, 406 (Minn. 1986) citing 4 J. Moore, Moore's Federal Practice ¶ 26.66[3] (1984). As the Supreme Court has reiterated in [Dorn v. Home Farmers Mutual Ins. Assn.](#), 300 Minn. 414, 419, 220 N.W.2d 503 (1974) that the primary purpose of pre-trial interrogatories is to prevent unjust surprise at trial, while recognizing “that our trial courts must have some discretion in this area, we caution that this court will carefully scrutinize situations such as the one at issue.” (Emphasis added.)

In [Sorenson v. St. Paul Ramsey Medical Center](#), 457 N.W.2d 188, 193 (Minn. 1990) the Supreme Court has found this language in the rule, in discussing the identical language in [Minn. Stat. § 145.682, subd. 4](#), requires exclusively in medical malpractice actions a “highly detailed disclosure” mandating “... specific details concerning their expert testimony...” contrary to the interpretation of the same language for all other causes which is a “general disclosure requirement” because of the language of “substance” and “summary” suggesting such. The Defendants' disclosures, as reflected above, must meet this “highly detailed disclosure” of “....specific details concerning their expert testimony”.

The above classification must embrace the Defendants also. A different rule for the Defendants, particularly when the rule and the statute are identically the same, is an unconstitutional application of the statute and violation of the equal protection clause of the [U.S. Const. Amend. XIV](#). As the Supreme Court stated in the [City of St. Paul v. Dalsin](#), 245 Minn. 325, 331, 71 N.W.2d 855 (1955) “It is elementary that a classification to be valid must embrace and uniformly affect all who are similarly situated, ...”¹ i.e. all litigants in medical practice actions. Any testimony by Defendants' experts, in any detail, which has not been disclosed is inadmissible and such evidence is not only contrary to the statute and rule, as interpreted in *Sorenson*, but is also an unequal application of such statute and rule against the Plaintiff.

This is particularly true in the instant case where the Plaintiff has suffered through the scrutiny of minute disclosure under a Defendants' motion to dismiss pursuant to [Minn. Stat. § 145.682](#). The Defendants must be compelled to live by the same standard.

Dated: 8/9/11

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Footnotes

- 1 “It is elementary that a classification to be valid must embrace and uniformly affect all who are similarly situated, and the distinctions which separate those who are included from those who are excluded must, upon some reasonable view of the facts, be genuine and substantial so as to provide a reasonable -- as distinguished from a merely capricious and arbitrary -- basis for the imposition of special legislative regulations.”